

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

NANCY GIVINGS,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-17-1-R
)	
TOMMIE ACKERMAN, et al.,)	
)	
)	
)	
Defendants.)	

ORDER

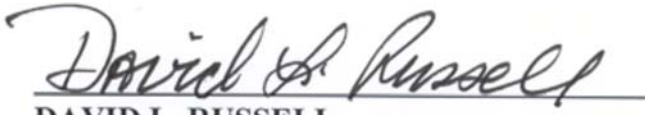
Before the Court is Defendants’ Joint Motion to Dismiss for insufficient process, insufficient service of process, and failure to state a claim. (Doc. 4). Plaintiff Nancy Givings has not responded.

Defendants Ackerman, Blosser, Bell, Citty, Gregory, and the City of Oklahoma City ask this Court to dismiss this suit pursuant to Federal Rules of Civil Procedure 12(b)(4) and 12(b)(5) for insufficient process and insufficient service of process, respectively.

“Effectuation of service is a precondition to suit.” *Jenkins v. City of Topeka*, 136 F.3d 1274, 1275 (10th Cir. 1998). Federal Rule of Civil Procedure 12(b)(5) allows a court to dismiss a complaint for insufficient service of process. “If a defendant challenges service of process, the plaintiff has the burden of proving that service of process was sufficient.” *Fulton v. Diagnostic Imaging Centers, P.A.*, No. 16-2281-CM, 2017 WL 169027, at *1 (D. Kan. Jan. 17, 2017).

Because Plaintiff has failed to respond, she has failed to establish her burden of proving that service of process was sufficient. Defendants' Motion is therefore GRANTED. Plaintiff's claims are thus dismissed without prejudice.

IT IS SO ORDERED this 13th day of February 2017.



DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE